

1 BILL NO. S-82-09- 12

2 SPECIAL ORDINANCE NO. S- 166-82

3 AN ORDINANCE approving Improvement
4 Resolution No. 5942-82, 1982 Flood
5 Damage to Dwenger Avenue Area, with
6 Brooks Construction Company, Inc., in
7 connection with the Board of Public Works.


8 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF
9 FORT WAYNE, INDIANA:

10 SECTION 1. That a certain Contract dated August 18,
11 1982, between the City of Fort Wayne, Indiana, by and through
12 its Mayor and the Board of Public Works and Brooks Construction
13 Company, Inc., for:

14 the resurfacing of Dwenger Avenue from ACRO
15 Products east to the west entrance of the
16 Humane Shelter and the repair of curbs and
17 driveways due to damage caused by 1982 Flood;

18 under Board of Public Works Improvement Resolution No. 5942-82,
19 involving a total cost of Forty-Six Thousand Five Hundred
20 Thirty-Four and 14/100 Dollars (\$46,534.14), all as more particu-
21 larly set forth in said Resolution and Contract which is on file
22 in the Office of the Board of Public Works and is by reference
23 incorporated herein, made a part hereof and is hereby in all
24 things ratified, confirmed and approved. Two copies of said
25 Contract are on file in the Office of the City Clerk and made
26 available for public inspection, according to law.

27 SECTION 2. That this Ordinance shall be in full force
28 and effect from and after its passage and any and all necessary
29 approval by the Mayor.

30 
31 Councilmember

32 APPROVED AS TO FORM
AND LEGALITY


Bruce O. Bokberger, City Attorney

Read the first time in full and on motion by Stier,
seconded by Public Works, and duly adopted, read the second time
by title and referred to the Committee Public Works (and the City
Plan Commission for recommendation) and Public Hearing to be held after
due legal notice, at the Council Chambers, City-County Building, Fort Wayne,
Indiana, on _____, the _____ day of _____,
19____, at _____ o'clock _____ M., E.S.T.

DATE: 9-14-82

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Read the third time in full and on motion by Stier,
seconded by Public Works, and duly adopted, placed on its
passage. PASSED (LOST) by the following vote:

| | AYES | NAYS | ABSTAINED | ABSENT | TO-WIT: |
|-------------|----------|----------|-----------|--------|---------|
| TOTAL VOTES | <u>9</u> | <u>0</u> | _____ | _____ | _____ |
| BRADBURY | <u>X</u> | _____ | _____ | _____ | _____ |
| BURNS | <u>X</u> | _____ | _____ | _____ | _____ |
| EISBART | <u>X</u> | _____ | _____ | _____ | _____ |
| GIAQUINTA | <u>X</u> | _____ | _____ | _____ | _____ |
| SCHMIDT | <u>X</u> | _____ | _____ | _____ | _____ |
| SCHOMBURG | <u>X</u> | _____ | _____ | _____ | _____ |
| SCRUGGS | <u>X</u> | _____ | _____ | _____ | _____ |
| STIER | <u>X</u> | _____ | _____ | _____ | _____ |
| TALARICO | <u>X</u> | _____ | _____ | _____ | _____ |

DATE: 9-28-82

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,
Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL)

(APPROPRIATION) ORDINANCE (RESOLUTION) NO. 1-166-82
on the 28th day of September, 1982.

ATTEST:

(SEAL)

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on
the 29th day of September, 1982, at the hour of
11:30 o'clock P. M., E.S.T.

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 4th day of October
1982, at the hour of 10 o'clock A M., E.S.T.

Win Moses, Jr.
WIN MOSES, JR. - MAYOR

BILL NO. S-82-09-12

REPORT OF THE COMMITTEE ON PUBLIC WORKS

WE, YOUR COMMITTEE ON Public Works TO WHOM WAS REFERRED AN
ORDINANCE approving Improvement Resolution No. 5942-82,
Flood Damage to Dewenger Avenue Area, with Brooks Construction
Company, Inc., in connection with the Board of Public Works

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT
BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE DO PASS.

JAMES S. STIER, CHAIRMAN

BEN A. EISBART, VICE CHAIRMAN

VICTURE L. SCRUGGS

MARK E. GIAQUINTA

DONALD J. SCHMIDT

9-28-82
DATE 9-28-82 CONCLUDED IN
CHARLES W. WESTERMAN, CITY CLERK

CONTRACT

This Agreement, made and entered into this _____ day of _____, 19____

by and between _____ BROOKS CONSTRUCTION COMPANY, INC. _____

_____ 1123 Barthold St., P.O. Box 8097, Ft. Wayne, Ind. 46898 _____

hereinafter called "Contractor" and the City of Fort Wayne, Indiana, a municipal corporation, hereinafter called "City," under and by virtue of an act of the General Assembly of the State of Indiana, entitled "An Act Concerning Municipal Corporations," approved March 6, 1905, and all amendatory and supplementary acts thereto, WITNESSETH: That the Contractor covenants and agrees to ~~the~~ ^{xxx} improve Resolution No. 5942-82
~~xxxx~~ ^{xxxx} repair 1982 Flood Damage in the Dwenger Avenue Area.

This Resolution includes: DSR #041857

by grading and paving the roadway to a width of ~~XXXXXXXXXXXXXXXXXXXX~~ ^{XXXXXXXXXXXXXXXXXXXX} feet with ~~XXXXXXXXXXXXXXXXXXXX~~ ^{XXXXXXXXXXXXXXXXXXXX}

~~XXXXXXXXXXXXXXXXXXXX~~ ^{XXXXXXXXXXXXXXXXXXXX}

upon a foundation and with curbing as fully set out in the specifications hereinafter referred to, in a good and workmanlike manner and to the entire satisfaction of said City, in accordance with Improvement Resolution No. 5942-82 attached hereto and by reference made a part hereof.

At the following prices:

DSR #041857

| | | |
|--|--|--------|
| Asphalt Removal (Surface) | No dollars and sixty-two cents per square yard | .62 |
| Concrete Curb Type III (Including Removal) | Thirteen dollars and no cents per lineal foot | 13.00 |
| 4" Concrete Sidewalk (Including Removal) | Three dollars and no cents per square foot | 3.00 |
| 6" Concrete Drives | Twenty dollars and twenty-five cents per square yard | 20.25 |
| Underseal | Four hundred dollars and no cents per ton | 400.00 |
| Joint & Crack Sealer | Nine hundred dollars and no cents per ton | 900.00 |
| Hot Asphalt Concrete (Patching) | Fifty-five dollars and no cents per ton | 55.00 |
| Hot Asphalt Concrete (Binder) | Nineteen dollars and six cents per ton | 19.06 |
| Hot Asphalt Concrete (Surface) | Twenty-two dollars and forty-three cents per ton | 22.43 |
| Casting, Type A | Two hundred dollars and no cents per each | 200.00 |
| Casting, Type C | Three hundred and ten dollars and no cents per each | 310.00 |

The Contractor hereby expressly agrees to perform all the work in the prosecution of the above described improvement according to the terms and conditions of Improvement Resolution No. 5942-82, the plans, profiles, specifications and the contractor's bid therefor on file in the office of the Department of Public Works of said City, which said resolution, profile, plans and specifications are made a part of this contract as fully and effectually as if copied herein at full length, (copies of which are attached hereto).

It is hereby agreed that no assignment of this contract shall be made without the written consent of the City; said Contractor hereby covenants and agrees that said improvement shall be finally and in all respects completed on or before Sept. 30, 1982 and the Contractor agrees to pay and give to the City, as liquidated damages, the sum of \$25,000 for each and every day after said date 19 until said work is finally completed and ready for acceptance by the City. It being also understood that in event of any conflict between this contract and the specifications, that the former shall be considered to contain the intention of the parties hereto.

It is further agreed by and between said parties, that the acceptance of the work provided for in this contract, or the payment therefor, for the whole or a part, shall not constitute a waiver on the part of the City of any of the provisions of the contract, nor shall it release said Contractor, or the sureties upon its bond for the faithful performance thereof, nor shall the acceptance be even prima facie evidence of the performance of any provisions of such contract except to the extent of entitling said Contractor to receive the price therefor. It is further understood that the failure of the City to exercise its right of inspection or rejection of material and work, or the exercise of such right shall not in any sense be considered an acceptance of any part of said work or material.

The Contractor further contracts and agrees that in the prosecution of said work all proper skill and care will be exercised, that said party will properly and fully guard all excavations and dangerous places, and will use all due and proper precautions to prevent injury to any property, person and persons, what or whomsoever. That for and during the period of the making of such improvement, and the period for which the same is to be maintained and kept in repair by the Contractor, the City shall be saved harmless from any and all liability whatsoever growing out of any injury or damage to property or persons because of any neglect or fault of the said Contractor, its agents or employees, in the execution of this contract or any matter connected therewith or related thereto and to pay any judgment with costs which may be obtained against said City, growing out of any such injury or damage.

To each of the conditions and stipulations in this contract, the undersigned bind themselves, their successors and assigns.

IN WITNESS WHEREOF, we the foregoing named parties hereunto set our hands this 18th

day of August, 1982

ATTEST:

[Signature]
Corporate Secretary

BROOKS CONSTRUCTION COMPANY

BY: Robert F. Gush

ITS: Pa.

Contractor, Party of the First Part.

City of Fort Wayne, By and Through:

[Signature]
Robert Anderson
Betty R. Collins

Its Board of Public Works and Mayor.

ATTEST:

[Signature]
Secretary and Clerk

Sandra E. Kennedy

[Signature]

ASSOCIATE CITY ATTORNEY.

Total

Forty-six thousand, five hundred and
thirty-four dollars and fourteen
cents

\$46,534.14

The Contractor will furnish immediately a certificate from the Industrial Board of the State of Indiana that he has complied with Sections 5, 68, 69 of the Workmen's Compensation Act, approved March 14, 1929, in accordance with Section 14 of the Compensation Act (Acts 1929, page 545, being I.C. 22-3-2-1 et. seq.).

A copy of General Ordinance No. G-34-78 (as amended) concerning discriminating in employment under municipal contracts, is attached and incorporated herein by reference.

PERFORMANCE AND GUARANTEE BOND

KNOW ALL MEN BY THESE PRESENTS, that we BROOKS CONSTRUCTION COMPANY, INC.
as Principal, and the American States Insurance Company
_____, a corporation organized under the laws of the
State of Indiana, and duly authorized to transact business in the
State of Indiana, as Surety, are held firmly bound unto the City of Fort Wayne,
Indiana, an Indiana Municipal Corporation in the sum of FORTY-SIX THOUSAND,
FIVE HUNDRED AND THIRTY-FOUR DOLLARS AND FOURTEEN CENTS -----
(\$ 46,534.14-----), for the payment whereof well and truly to be made,
the Principal and Surety bind themselves, their heirs, executors, administrators,
successors and assigns, jointly and severally, firmly by these presents. The
condition of the above obligation is such that

WHEREAS, the Principal did on the 18th day of August, 1981,
enter into a contract with the City of Fort Wayne to ~~construct~~ repair

Improvement Resolution No. 5942-82

1982 Flood Damage in the Dwenger Avenue Area.

This Resolution includes: DSR #041857

at a cost of \$ 46,534.14-----, according to certain plans and specifications
prepared by or approved by the City.

WHEREAS, the grant of authority by City to so construct such improvement
provides:

1. That said improvement shall be completed according to said plans and
specifications, and contractor shall warrant and guarantee all work, mater-
ial, and conditions of the improvement for a period of three (3) years from
the date of final acceptance in writing by the Owner;
2. There shall be filed with the City, within thirty (30) days after comple-
tion, a Completion Affidavit;
3. Said Principal is required to agree to make such adjustments, modifica-
tions, and repairs as required by the City within thirty (30) days after
notice.

WHEREAS, said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work or to the specifications.

NOW THEREFORE, if the principal shall faithfully perform all of the terms and conditions required of it by the contract and shall for three (3) years after acceptance of said improvement by City warrant and guarantee said improvement and shall indemnify the City for all loss that City may sustain by reason of the Principal's failure to comply with any of the terms of the authorization, then this obligation shall be void, otherwise it shall remain in full force and effect.

BROOKS CONSTRUCTION COMPANY, INC.
(Contractor)

BY: Robert F. Brooks

ITS: Pres.

ATTEST:

[Signature]
(Title)

AMERICAN STATES INSURANCE COMPANY
Surety

*BY: N. Richard Cragin
Authorized Agent
(Attorney-in-Fact)

*If signed by an agent, power of attorney must be attached

ATTACH POWER OF ATTORNEY

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that

----- BROOKS CONSTRUCTION COMPANY, INC. -----

(Name of Contractor)

----- 1123 Barthold St., P.O. Box 8097, Ft. Wayne, Ind. 46898 -----

(Address)

a Corporation, hereinafter called Principal,
(Corporation, Partnership or Individual)

and American States Insurance Company
(Name of Surety)

and duly authorized to transact business in the State of Indiana, hereinafter called Surety, are held and firmly bound unto the City of Fort Wayne, an Indiana Municipal Corporation in the penal sum of FORTY-SIX THOUSAND, FIVE HUNDRED AND THIRTY-FOUR DOLLARS AND FOURTEEN CENTS

for the payment whereof well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the Owner, dated the 11th day of August, 19 97, for the construction of:

Improvement Resolution No. 5942-82

Repair of 1982 Flood Damage in the Dwenger Avenue Area.

This Resolution includes: DSR #041857

at a cost of FORTH-SIX THOUSAND, FIVE HUNDRED AND THIRTY-FOUR DOLLARS AND FOURTEEN CENTS

(\$ 46,534.14-----), all according to Fort Wayne Street Engineering Department plans and specifications.

WHEREAS, said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work or to the specifications, and

WHEREAS, no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor, performed in such work whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, this instrument is executed in 3 counter-
(number)
parts, each one of which shall be deemed an original, this 18th day of
August, 1979-1982

(SEAL)

ATTEST:

[Signature]
(Principal) Secretary

[Signature]
Witness as to Principal

3126 Trenton Ct
(Address)

H. Wayne, Inc. 46808

[Signature]
Witness as to Surety

356 W. Bryan St.
(Address)

Berne, Ind 46711

BROOKS CONSTRUCTION COMPANY, INC.

Principal

BY [Signature]
(Title)

1128 Bethel St. Ft. W. TX.
(Address)

AMERICAN STATES INSURANCE COMPANY

Surety

BY [Signature]
Attorney-in-Fact
(Authorized Agent)

[Signature]
(Address)

NOTE: Date of Bond must not be prior to date of Contract.
If Contractor is Partnership, all partners should execute bond.

ATTACH POWER OF ATTORNEY

FEDERAL EMERGENCY MANAGEMENT AGENCY

DAMAGE SURVEY REPORT

DISASTER RESPONSE AND RECOVERY
(See instructions on reverse)

3. DECLARATION NO.

FEMA 652

4. INSPECTION DATE

3-29-82

5. WORK ACCOMPLISHED BY

☒ CONTRACT☐ FORCE ACCOUNT

6. PERCENTAGE OF WORK

... COMPLETED TO DATE

100%

8A. FACILITY IN OR AFFECTS
FLOOD PLAIN OR WET LANDS☒ YES ☐ NO1. TO ☒ REGION 5 FEDERAL EMERGENCY MANAGEMENT AGENCY

2. APPLICANT (State Agency, County, City, etc.)

City of Ft. Wayne

PA NO.

7. WORK CATEGORY ("X" Applicable Box)

☐ EMERGENCY ☐ A ☐ B☐ PERMANENT ☒ C ☐ D ☐ E ☐ F ☐ G ☐ H ☐ I

DSR NO.

041857

8. DAMAGED FACILITIES (Location, identification and description)

Dwenger Ave. from ACRO Products Inc east to
west entrance of Humane Shelter,
Emergency haul road

9. DESCRIPTION OF DAMAGE

Roadway surface damaged by emergency haul
vehicles including concrete curbs and driveways. Voids under
existing conc. base. Railway on Edsall Ave. 54 RR tracks.
Note: Possible sewer damage to be reviewed by CORPS

10. SCOPE OF PROPOSED WORK

Resurface approximately 2200 ft. (by 32 ft.) of
Dwenger Ave. Resurface west Treatment Plant entrance and replace
curbs. Reconstruct east entrance of Humane Shelter and sidewalks.
Patching 4' of track at east end of Dwenger on Edsall Ave.
Construction to be done in accordance with City Policy & Standards.

11. ESTIMATED COST OF PROPOSED WORK

| QUANTITY (a) | UNIT (b) | MATERIAL AND/OR DESCRIPTION (c) | UNIT PRICE (d) | COST (dollars) (e) |
|-----------------|-------------|------------------------------------|-------------------|-----------------------|
| 7822 | SY | Surface Removed | 3.50 | 27,377 |
| 860 | Ton | Binder 2" (Bituminous) | 30.00 | 25,800 |
| 130 | Ton | Surface 1" (Bituminous) | 30.00 | 12,900 |
| 150 | LF | 6 in Conc. Curb Type III | 10.00 | 1,500 |
| 20 | LF | 5 ft. Conc. Sidewalk | 13.00 | 260 |
| 32 | SY | Class A Conc. Drive | 20.00 | 640 |
| 6 | ea | Adjust Mlt Castings (new) | 350.00 | 2,100 |
| 5 | ea | Reset Inlet Castings (new) | 350.00 | 1,750 |
| 20 | Ton | Underseal | 280.00 | 5,600 |
| 1 | Ton | Int Crack Sealer | 750.00 | 750 |
| 20 | Ton | Patching | 60.00 | 1,200 |
| | | Const Engr. 10% | | 7,900 |

12. EXISTING INSURANCE (Type)

N/A

AMOUNT
\$TOTAL ☒ \$ 88,777

13. RECOMMENDATION BY FEDERAL INSPECTOR (Signature, Agency, date)

James FITZ 3-29-82

ELIGIBLE

☒ YES ☐ NO

ATTACHMENTS

pictures

14. CONCURRENCE IN REPORT BY STATE INSPECTOR (Signature, Agency, date)

Michael C. Hallen IDOH 3-29-82

CONCUR

☒ YES ☐ NO

ATTACHMENTS

15. CONCURRENCE IN REPORT BY LOCAL REPRESENTATIVE (Signature, Agency, date)

David R. Anderson FT. WAYNE ST. ENGR. 3/29/82

CONCUR

☒ YES ☐ NO

ATTACHMENTS

16. FEDERAL REVIEW (Signature, Agency, date)

FEMA REVIEW (Initials and date)

82-09-12
TITLE OF ORDINANCE Resolution 5942-82; 1982 Flood Damage to Dwenger Avenue Area

DEPARTMENT REQUESTING ORDINANCE Board of Public Works

SYNOPSIS OF ORDINANCE Resurface Dwenger Avenue from ACRO Products east to the west entrance of Humane Shelter. Also repair curbs and driveways. This damage is a result of the 1982 Flood and described in the Federal Emergency Management Agency Damage Survey Report #041857.

Contract has been awarded to Brooks Construction Company, Inc.

Prior approval received on August 3, 1982.

EFFECT OF PASSAGE restore pavement

EFFECT OF NON-PASSAGE

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$46,534.14

75% FEMA 25% City

ASSIGNED TO COMMITTEE